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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,386	09/05/2003	Donald L. Simmons	5600-85	9584
7590 12/20/2005			EXAMINER	
Mr. F. Michael Sajovec MYERS BIGEL SIBLEY & SAJOVEC, P.A.			AFREMOVA, VERA	
4140 Parklake Avenue, Suite 600		9 1 . 73.	· ART UNIT	PAPER NUMBER
Releigh, NC 27612			1651	

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)		
	10/656,386	SIMMONS ET AL.		
Office Action Summary	Examiner	Art Unit		
	Vera Afremova	1651		
The MAILING DATE of this communication app Period for Reply	pears on the cover sheet with the	correspondence address		
A SHORTENED STATUTORY PERIOD FOR REPL WHICHEVER IS LONGER, FROM THE MAILING D - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period - Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailin earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION (136(a). In no event, however, may a reply be will apply and will expire SIX (6) MONTHS from (136), cause the application to become ABANDON	ON. timely filed om the mailing date of this communication. NED (35 U.S.C. § 133).		
Status				
 Responsive to communication(s) filed on 12 A This action is FINAL. Since this application is in condition for alloware closed in accordance with the practice under B 	s action is non-final. nce except for formal matters, p			
Disposition of Claims				
4) ☐ Claim(s) 1-39 is/are pending in the application 4a) Of the above claim(s) is/are withdra 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) 1-39 are subject to restriction and/or	wn from consideration.			
Application Papers				
9) The specification is objected to by the Examine 10) The drawing(s) filed on is/are: a) acc Applicant may not request that any objection to the Replacement drawing sheet(s) including the correct 11) The oath or declaration is objected to by the Example 11.	epted or b) objected to by the drawing(s) be held in abeyance. Stion is required if the drawing(s) is constant.	tee 37 CFR 1.85(a). Objected to. See 37 CFR 1.121(d).		
Priority under 35 U.S.C. § 119				
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 				
Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date	4) Interview Summa. Paper No(s)/Mail 5) Notice of Informal 6) Other:			

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DETAILED ACTION

Claims 1-39 are pending and subject to restriction requirement.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-26, drawn to a viable probiotic formulation comprising a core preparation with probiotic bacteria and an enteric coating, classified in class 424, subclass 93.1, for example.
- II. Claims 27-39, drawn to a process for preparing a viable probiotic formulation comprising a core preparation with probiotic bacteria and an enteric coating, classified in class 424, subclass 93.1, for example.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case a viable probiotic formulation comprising a core preparation with probiotic bacteria and a coating resistant to enteric or gastric juices can be made by another and materially different processes including the use of various materials and encapsulation techniques, for example: see IDS reference US 5,633,012 (col. 5, lines 5-35).

Because these inventions are distinct for the reasons given above and the search required for one group is not required for the other group, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Afremova whose telephone number is (571) 272-0914. The examiner can normally be reached from Monday to Friday from 9.30 am to 6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached at (571) 272-0926.

The fax phone number for the TC 1600 where this application or proceeding is assigned is (571) 273-8300.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology center 1600, telephone number is (571) 272-1600.

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Vera Afremova

AU 1651

December 12, 2005

VERA AFREMOVA

V. Span

PRIMARY EXAMINER